

June 19, 2012

direct dial (202) 824-1421

Via Overnight Delivery

Margo Oge, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 6401A
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Re: *Mack Trucks, Inc. v. EPA*, No. 12-1077 (D.C. Cir. June 12, 2012)

Dear Ms. Oge:

On June 12, 2012, the U.S. Court of Appeals for the District of Columbia Circuit vacated an Interim Final Rule ("IFR") promulgated by the Environmental Protection Agency ("EPA") on January 31, 2012, that made available nonconformance penalties ("NCPs") for MY 2012 and 2013 engines. *Mack Trucks, Inc. et al. v. EPA*, No. 12-1077 (D.C. Cir. June 12, 2012). We are writing on behalf of Mack Trucks, Inc. and Volvo Group North America (collectively "Mack") to request that, consistent with the Court's ruling, EPA invalidate the certificates of conformity issued to manufacturers based on the payment of NCPs provided under the IFR. In addition, and very importantly, we are requesting your confirmation that you will order manufacturers to stop the production and sale of engines pursuant to certificates based on the IFR and refrain from issuing any additional certificates. We also agree with the Court and urge EPA not to finalize the rulemaking currently underway that would allow NCPs for the 2010 standards.

Mack is aware of four certificates of conformity issued by the EPA in reliance on the IFR. Now that the IFR has been vacated, NCPs are not available and any certificates of conformity premised on the payment of NCPs are invalid. Thus, we are both requesting and anticipating that EPA will act consistently with the Court's order, without waiting for the issuance of a formal mandate from the Court.¹ Waiting for the Court to issue the mandate would significantly exacerbate the effects of the IFR, as Navistar has stated that it intends to continue to produce and sell engines pursuant to its NCP-based certificates of conformity unless or until EPA directs otherwise. See "Court Overturns Navistar Engine Ruling," *Wall Street Journal*, June 12, 2012. In fact, Navistar may actually increase production of these higher-emitting engines to build up its supply as much as possible before the company is ordered to cease this

¹ *Chamber of Commerce v. Securities and Exchange Commission*, 443 F.3d 890, 898-99 (D.C. Cir. 2006).

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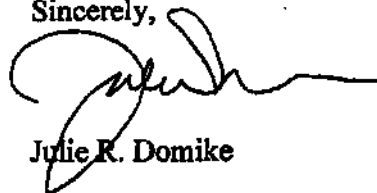
activity. In order to level the competitive playing field, and remove the incentive to any one company to unfairly gain advantage --and gain such advantage in direct contravention of the Court's order-- EPA should quickly issue a clear statement regarding the invalidity of the certificates and thus act to prevent this activity. By doing so, EPA will be following the Court's order and undertaking its obligations under the Clean Air Act.²

For these reasons, Mack respectfully requests that EPA take all steps necessary to immediately implement the Court's decision. These include invalidating certificates of conformity that were issued in reliance on the IFR, notifying Navistar and other certificate holders, if any, that they must stop placing any engines covered by these certificates into commerce in the United States, and not issuing any further certificates based on the now-vacated IFR.

On behalf of Mack and its employees nationwide, we greatly appreciate the efforts EPA is making to maintain a level playing field for all manufacturers, consistent with the goals of the Clean Air Act.

Please contact me if you have any questions regarding this request, and thank you for your assistance and cooperation on this vitally important matter.

Sincerely,



Julie R. Domike

cc: Phillip Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance

² While the Court's order is not effective until the issuance of a mandate pursuant to F.R.A.P. and D.C. Circuit Rule 41, the effective date will not alter the legal status of these engines.